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28 August 1951

MEMORANDUM FOR THE RECORD

SUBJECT: Discussion with Mr. Dulles Regarding His Status

1. The undersigned discussed with Mr. Dulles today various legal aspects concerning his status as Deputy Director of Central Intelligence. It was pointed out to Mr. Dulles that by virtue of P. L. 359, the executive pay bill, Congress prescribed that the compensation for the Deputy Director of Central Intelligence shall be \$11,000.00 per annum. There are several Comptroller General opinions bearing generally on this subject (27 Comp. Gen. 174, 9 October 1947 and 26 Comp. Gen. 956, 27 June 1947). Those opinions generally hold that where compensation is fixed for any position by statute, the amount so fixed must be paid to the person filling the position, and there can be no valid waiver of all or any part of the salary.
2. It was pointed out, however, that the Comptroller General, in an unpublished decision, dated 16 September 1946, No. B-59729, approved a voluntary relinquishment by Mr. Daniel W. Bell of a portion of his salary as a member of the Price Decontrol Board, which salary was set by statute. Although the case seems "on all four's," with the case of Mr. Dulles, this office was doubtful as to the reliability of the opinion since the two published opinions cited above were subsequent to the unpublished opinion. In the unpublished opinion there was no explanation of the basis upon which the Comptroller General approved a voluntary relinquishment of pay. Consequently, it was indicated to Mr. Dulles that this office cannot advise him on this particular point without first obtaining a formal ruling from OAO.
3. It was indicated to Mr. Dulles that the previous arrangement whereby he served without compensation and received appropriate travel expenses and \$10.00 per diem in lieu of subsistence while in Washington would be open to some doubt under his new position, particularly with reference to the tax-free status of per diem. It was pointed out that the Bureau of Internal Revenue could quite

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logically rule that since he was occupying a position, compensation of which had been established by Congress, and since he was physically required to be in Washington to perform those duties, his "home" for tax purposes would be ruled as Washington, D. C., rendering the per diem nontax-free.

4. Mr. Dulles concurred fully with respect to this office's views of continuation of his per diem arrangement. Therefore, he requested that Personnel Division be asked to prepare appropriate papers, including an Oath of Office, in order that he might be appointed on the record as the Deputy Director of Central Intelligence, receiving the compensation attaching to that office. The previous arrangement should be terminated. It is quite clear to Mr. Dulles that his travel expenses to and from New York must be borne by him unless he is clearly on official Agency affairs.

5. As a matter of interest, the undersigned pointed out an opinion by the Attorney General concerning laws pertaining to a law partner serving with the Government (40 Op. Atty. Gen. 239, 6 November 1943). Mr. Dulles was quite interested in the opinion and requested that it be left with him for further perusal. As a matter of information, he advised that he had an agreement with his firm whereby he was placed on leave of absence and had no responsibility for firm affairs and received no compensation from current business. The arrangement did not exclude Mr. Dulles' share of currently collected fees paid for services rendered by the firm prior to his leave of absence to associate himself with CIA.

6. Mr. Malone has been advised to prepare the necessary papers and Mr. Wolf has been briefed fully on the status of the case.

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Acting General Counsel

OGC/JSW:mwr

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